

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 29 2003

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Alascom, Inc. Request for) WC Docket No. 03-18
Waiver of Commission Rule)
And Orders Requiring Annual)
Tariff Revision)

ALASCOM'S REPLY TO GCI'S OPPOSITION

Alascom, Inc. ("Alascom"), by its attorneys, and in accordance with Section 1.45(c) of the Commission's Rules, hereby submits its Reply to the General Communication, Inc. Opposition to Motion to Dismiss and Comments of Alascom, Inc. filed May 19, 2003 ("Opposition"). GCI's Opposition does not allege any credible substantive basis or change in material facts to support its untimely and duplicative Motion to Deny Alascom's Petition for Waiver.¹ GCI merely repeats the arguments and relief it sought initially in its Petition to Deny in this proceeding.

GCI's Opposition does not cite any Commission rule or precedent that would authorize essentially another round of pleadings in this proceeding. GCI argues that, since it has not yet been given access to the confidential data it demanded from Alascom, this fact somehow authorizes the Motion to Deny, which duplicates its earlier Petition to Deny. The Commission's staff has been engaged actively with the parties in attempting to resolve the issue of release of information, including

¹ On January 7, 2003, Alascom filed its Petition for Waiver ("Waiver Petition"), against which GCI filed its Petition to Deny on February 5, 2003 ("Petition to Deny") pursuant to the pleading cycle established by the Commission in *Petition for Waiver of the Commission's Rule Regarding Its Annual Tariff F.C.C. No. 11*, WC Docket No. 03-18, DA 03-169 (January 21, 2003).

resolving the related Freedom of Information Act Request (FOIA) filed by GCI. The only "change in circumstances" alleged by GCI is that its counsel has asked for the same confidential information again that it sought earlier in this proceeding.

(Opposition, pp. 2-5) GCI's repetition of its previous requests, including attaching a copy of the exact same documents it sought earlier (Opposition, Attachment 1) does not make this a different request. GCI asks for the same remedies based upon the same allegations as in its Petition to Deny.

For example, GCI states that it has "executed two separate protective orders in an effort to accommodate Alascom's alleged confidentiality concerns."

(Opposition, p. 3) Early in this proceeding, Alascom promptly agreed to enter into a standard protective order to provide GCI with data that was not part of the Confidential Information. Subsequently, without Alascom's agreement, GCI executed the same standard protective order seeking to obtain access to the Confidential Information while the question of whether GCI would be permitted any access to that information was pending before the Commission in the FOIA proceeding. GCI should not be permitted to create a new pleading cycle by its unilateral execution of that protective order.

On the same day GCI filed its Opposition, it also filed additional arguments against terms in the FCC's proposed protective order, which would restrict GCI employees participating directly in business decisions from access to the Confidential Information.² This only increases Alascom's concern that GCI, Alascom's key competitor, would use the Confidential Information for purposes


² See e-mail from Tim Hughes, counsel for GCI to FCC, of May 19, 2003, attached hereto.

beyond the scope of this proceeding. But in any event, unilateral actions by GCI do not give rise to a valid basis to permit it to reargue its earlier claims and to reassert its previous requests for relief.

Therefore, in order to conserve the resources of the Commission and the parties, and to support the public interest in orderly proceedings before the Commission, the GCI Motion to Deny should be denied.

Respectfully submitted,

ALASCOM, INC.

By 
Charles R. Naftalin

Charles R. Naftalin
Jonathan Epstein
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Suite 100
Washington, DC 20006-6801
(202) 457-7040

May 29, 2003

Its Attorneys

CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary in the firm of Holland & Knight LLP, hereby certify that on the 29th day of May, 2003, copies of Alascom's Reply to GCI's Opposition were sent by electronic mail to the following:

Joe D. Edge*
Tina M. Pidgeon
Drinker Biddle & Reath, LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005
Counsel for General Communication,
Inc.

Deena Shetler, Deputy Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Joseph T. Hall
Assistant Bureau Chief, Management
Wireline Competition Bureau
Federal Communications
Commission
445 Twelfth Street, SW
Washington, DC 20554

Julie Saulnier
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 5A207
Washington, DC 20554

*via U.S. mail


Judy Norris

WAS1 #1184910 v2

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April 2000 3060-0919

Federal Communications Commission
Commission Registration System (CORES)
CORES Certification Form

I, Judy Norris, certify that the FCC Registration Number (FRN) listed
below is true and correct to the best of my knowledge, information and belief.

FCC Registration Number (FRN)

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